STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1732

Randall Sehlstrom, a/k/a Randy Sehlstrom,
Appellant,

vs.

Donald Sehlstrom, et al.,
Defendants,

Leland Sehlstrom,
Respondent.

Filed May 7, 2018
Affirmed in part, reversed in part, and remanded
Stauber, Judge[*]

Roseau County District Court
File No. 68-CV-11-164

Dennis H. Ingold, Alan B. Fish, P.A., Roseau, Minnesota (for appellant)

Michael L. Jorgenson, Charlson & Jorgenson, P.A., Thief River Falls, Minnesota (for respondent)

Considered and decided by Schellhas, Presiding Judge; Reyes, Judge; and Stauber, Judge.

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

STAUBER, Judge

Appellant Randall Sehlstrom appeals a district court's order holding him in contempt for failing to pay respondent Leland Sehlstrom 1/7 of all royalties for sand and gravel removed from land, requiring him to pay $12,575.33 in unpaid royalties, and requiring him to pay Leland Sehlstrom's attorney fees. Respondent Leland Sehlstrom challenges the amount of attorney fees ordered. We affirm in part, reverse in part and remand.

FACTS

Appellant Randall Sehlstrom brought a partition action against respondent Leland Sehlstrom and other parties in 2011, to divide land in Roseau County that includes sand and gravel. The parties stipulated to a judgment that provided appellant with the land that contained the gravel pit, but reserved for respondent a 1/7 perpetual royalty interest in the sand and gravel located on that land. Respondent was to receive 1/7 of all gross sales of sand and gravel from that land. The order required appellant to provide respondent with "a full and complete accounting of all sand and gravel sales and uses" and provide a release of information, which would allow respondent direct contact with buyers and users of sand and gravel on the land.

In the first year after this stipulated judgment was entered, appellant did not provide respondent with a release of information or a full accounting of gravel and sand sales and uses. In August 2013, respondent filed a motion to hold appellant in contempt of the 2012 judgment. Appellant then provided a full accounting, paid respondent his share of the

royalties, and provided the release of information. Based on these actions, the district court denied the contempt motion.

In March 2015, appellant leased the gravel pit on his property to Spruce Gravel Sales, LLC (Spruce), a company appellant owns. The lease required Spruce to pay appellant $1.30 per yard of product removed from the gravel pit. Spruce in turn leased the right to remove material from the gravel pit to Minn-Dak Asphalt, Inc. (Minn-Dak) in July 2015. Minn-Dak was required to pay Spruce $2.00 or $2.50 per yard of product removed, which included a $0.65 per yard surface area lease payment. There was some disagreement over payment between Minn-Dak and Spruce, and Spruce sued Minn-Dak for underpayment. The case went to arbitration where judgment was entered awarding Spruce $10,997.16 in unpaid royalties for sand and gravel removed by Minn-Dak, and another $14,250.00 for materials removed by Northwest Concrete, which Minn-Dak, under the lease, was required to cover.

Concerned again about the lack of full accounting and potential underpayment of royalties, respondent attempted to begin post-judgment discovery in April 2017, starting by attempting to set up the deposition of appellant. When appellant refused, respondent scheduled depositions with two individuals who had purchased sand and gravel from appellant, Scott Hetteen who manages R&Q Trucking and Kilen Boe who owns Minn-Dak.

In response, appellant filed an emergency motion to stop post-judgment discovery. He also filed a motion for a protective order to that same end. The district court allowed

the depositions to proceed, but ordered they be kept under seal until a hearing could be held on the protective order.

The depositions revealed amounts both R&Q Trucking and Minn-Dak had paid to Spruce. Both deponents explained that when they purchased material from Spruce, they worked only with appellant, similar to when they worked with appellant individually, prior to Spruce's lease. Both deponents also explained that appellant told them not to share information with respondent regarding the sale of sand and gravel from the land, despite respondent's release of information rights, saying it was none of respondent's business.

After the depositions, there was a hearing on the motion for a protective order.[1] The district court denied the motion and unsealed the depositions. Respondent then filed a motion to hold appellant in contempt for failing to pay him his share of the royalties provided by the 2012 judgment.

Prior to the district court's decision on the contempt motion, appellant appealed the denial of the protective order to this court, arguing respondent is not a judgment creditor and therefore cannot conduct post-judgment discovery, that the district court lacked continuing jurisdiction,[2] and that appellant had a right to a jury trial on issues of fact. This court dismissed appellant's appeal because the district court's decision to deny the

[1] The transcripts of the hearings in the case were not ordered and are not part of the record on appeal. Neither party cites to any information from those hearings in their briefs, though appellant referred to them during oral argument. Because these transcripts are not part of the appellate record, we cannot and will not address arguments that refer to those proceedings. *See Thiele v. Stich*, 425 N.W. 2d 580, 582-83 (Minn. 1988) ("An appellate court may not base its decision on matters outside the record on appeal.").

[2] Appellant does not argue the jurisdictional issue here on appeal.

protective order did not conclude the underlying action, or preclude a final order or judgment from which an appeal could be taken.

The district court then granted respondent's contempt motion. It held appellant in contempt of court for failing to pay respondent proper royalties ordered in the 2012 judgment, ordered payment of $12,575.33 for unpaid royalties, as well as attorney fees, and imposed 30 days of jail time if appellant did not pay.

Respondent's counsel submitted an affidavit requesting $10,235.55 in attorney fees. Appellant contested this amount, arguing it was unreasonable and counsel's descriptions of what activities he completed were too vague. While the district court found the descriptions of activities adequate, it also found that the amount of attorney fees included "far more than just fees for the motion for contempt and the costs associated with bringing that motion," and reduced the attorney fees to $3,137.

Appellant appeals and respondent cross appeals.

D E C I S I O N

Appellant challenges the district court's failure to grant a protective order, asserts he is entitled to a jury trial on the facts surrounding unpaid royalties, argues the district court erred by holding him in contempt for failing to fully pay royalties and ordering that he pay those royalties, contests the district court's award of attorney fees, and challenges whether the district court's factual findings are supported by the evidence. We address each argument in turn.

I

Appellant argues that the district court erred in denying his motion for a protective order to stop post-judgment discovery surrounding royalty payments to respondent. He argues that the 2012 judgment only gave respondent an interest in land and did not award a specific sum of money, therefore he is not a judgment creditor and cannot pursue post-judgment discovery under Minnesota Rule of Civil Procedure 69.

The district court has wide discretion to issue discovery orders and, absent a clear abuse of that discretion, its discovery orders will not be disturbed. *In re Comm'r of Pub. Safety*, 735 N.W.2d 706, 711 (Minn. 2007). "We review a district court's order for an abuse of discretion by determining whether the district court made findings unsupported by the evidence or by improperly applying the law." *Id*.

Minnesota Rule of Civil Procedure 26.03 governs protective orders and allows a court, upon motion of a party for good cause shown, to "protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." The court can do so by ordering discovery "not be had," or limiting that discovery in scope or method. Minn. R. Civ. P. 26.03. Here, appellant sought a protective order that discovery not be had. Appellant's assertion of good cause for his motion was that respondent is not a judgment creditor, and therefore was not entitled to conduct post-judgment discovery under Minn. R. Civ. P. 69, which respondent asserts is the rule under which he sought discovery. Because appellant's argument that the court erred in denying his motion for a protective order is based on his assertion that respondent is not a judgment creditor, we

address the judgment creditor and post-judgment discovery issue before moving to the denial of the protective order.

Minn. R. Civ. P. 69 provides a "[p]rocess to enforce a judgment for the payment of money." It allows a "judgment creditor" to "obtain discovery from any person." Minn. R. Civ. P. 69. "Judgment creditor" is not defined in rule 69, but the term is defined in Minnesota Statutes section 551.03 (2016), which provides definitions for attorney's summary execution of judgment debts. That statute defines a judgment creditor as a "party who has a judgment for the recovery of money in the civil action." Minn. Stat. § 551.03, subd. 2 (2016).

The district court, when faced with this question, determined that respondent "was awarded a percentage of money generated from the gravel pit in this matter. As such, he is a judgment creditor for money and Rule 69 of the Rules of Civil Procedure allows for discovery in aid of the judgment or execution." The district court further noted that "it was obviously contemplated by the parties that some discovery might be needed as Plaintiff was to sign any releases necessary to obtain the information regarding income from the gravel pit from third parties."

We agree with the district court's conclusion, as well as its reasoning. For the purpose of rule 69, respondent is a judgment creditor. He was awarded a percentage of money from sand and gravel harvested and sold from appellant's land. Since entry of that judgment, appellant has sold such sand and gravel, and therefore, pursuant to the 2012 judgment, respondent is due money. Respondent can use rule 69 to enforce that judgment and recover that money.

Appellant argues that to be a judgment creditor, one would need to be awarded a specific sum of money in a judgment, and because there is no specific sum of money in the 2012 judgment, respondent is not a judgment creditor. Instead, because respondent was awarded future, unaccrued royalties, this was an interest in land, instead of a judgment for a sum of money. Appellant supports his arguments with the *Black's Law Dictionary* (10th ed. 2014) definition of judgment creditor, and caselaw from foreign jurisdictions. But because appellant presents no binding precedent to demonstrate the district court's conclusion was in error, we find no grounds to reverse the district court's determination that respondent is a judgment creditor. *See State v. McClenton*, 781 N.W.2d 181, 191 (Minn. App. 2010) (holding that this court is not bound by decisions from other states or federal courts), *review denied* (Minn. June 29, 2010).

Additionally, even if we did not apply rule 69 to allow for respondent's post-judgment discovery, the depositions at issue here could have been undertaken using the 2012 judgment alone. That judgment, which both parties stipulated to, required a release of information to allow respondent to seek information directly from third parties removing sand and gravel from appellant's property. It also required appellant to provide a "full accounting" of all sales. This is the exact information—how much material was purchased from third parties who bought sand and gravel on the property—that respondent sought. And, as the district court stated, this stipulated judgment demonstrated that the parties must have contemplated that "some discovery might be needed" because the judgment included these requirements. Even without applying rule 69, and without defining judgment creditor, the 2012 judgment could have independently supported the depositions taken.

Whether as a judgment creditor or through the 2012 judgment alone, respondent could properly take depositions from Hetteen and Boe. Because this discovery was proper, the district court properly declined to grant a protective order to stop the discovery. A court grants a protective order on good cause, and the good cause appellant asserts—that respondent is not a judgment creditor and cannot use rule 69—is invalid. *See* Minn. R. Civ. P. 26.03.[3]

The district court did not abuse its discretion in denying appellant's motion for a protective order.

II

Appellant argues that because respondent is not a judgment creditor and cannot pursue any unpaid royalties through the 2012 judgment, to pursue those royalties the respondent would have to file a new action which would bring with it a right to a jury trial to determine questions of fact. *See Park Nicollet Clinic v. Hamann*, 808 N.W.2d 828, 832 (Minn. 2011) ("A cause of action accrues when all of the elements of the action have occurred, such that the cause of action could be brought and would survive a motion to dismiss for failure to state a claim."); *see also* Minn. Const. art. I § 4; *State by Humphrey v. Alpine Air Prods., Inc.*, 490 N.W.2d 888, 895 (Minn. App. 1992) (holding that if a claim

[3] Additionally, protective orders may be granted to protect a party from "annoyance, embarrassment, oppression, or undue burden or expense." Minn. R. Civ. P. 26.03. Here, the 2012 judgment alone could have supported the depositions at issue, thus there is no additional annoyance, embarrassment, oppression, or undue burden or expense present here.

is for "the recovery of money, the Minnesota Constitution assures a right to a jury trial"), *aff'd*, 500 N.W.2d 788 (Minn. 1993).

But appellant's argument for a right to a jury trial rests entirely on respondent being unable to seek discovery and pursue royalties through the 2012 judgment itself. Because we determine respondent can seek discovery and pursue the unpaid royalties through the 2012 judgment, we do not address this argument.

III

Appellant argues that because respondent can only pursue unpaid royalties through a new action, the district court erred by holding him in contempt and awarding respondent unpaid royalties in its contempt order. Because we determine that respondent is a judgment creditor and can pursue post-judgment discovery without filing a new claim, we do not address this argument in full, but rather note the district court acted within its discretion.

"The district court has broad discretion to hold an individual in contempt. This court reviews a district court's decision to invoke its contempt power under an abuse-of-discretion standard." *Crockarell v. Crockarell*, 631 N.W.2d 829, 833 (Minn. App. 2001) (internal citation omitted), *review denied* (Minn. Oct. 16, 2001).

There are two types of contempt, civil and criminal. Civil contempt is where there is "disobedience, by one party to a suit, of a special order made on behalf of the other, and the order disobeyed may still be obeyed, and the purpose of the punishment is to aid in the enforcement of obedience." *Swift & Co. v. United Packing House Workers of Am.*, 228 Minn. 571, 573, 37 N.W.2d 831, 832 (1949). Here, appellant was held in civil contempt

because he disobeyed the 2012 order by failing to pay all royalties due respondent, he still has the ability to pay respondent, and the contempt order threatening incarceration is conditioned on appellant complying with the 2012 order and paying respondent what the court determined is due. Civil contempt does not bring with it the same rights, such as the right to a jury trial, as criminal contempt because a party can avoid the imposition of any sentence by complying with the court's order. 23 Ronald I. Meshbesher & James B. Sheehy, *Minnesota Practice* § 5:2 (2017-2018 ed.) (citing *Swift*, 228 Minn. at 571, 37 N.W.2d at 831).

To hold a party in civil contempt, eight requirements must be met. But because appellant only challenges one of these requirements—that the judgment clearly defined the acts to be performed by a party—that is the only requirement we will address. *See Hopp v. Hopp*, 279 Minn. 170, 174-75, 156 N.W.2d 212, 216-17 (1968) (listing all eight requirements for civil contempt).[4] Appellant asserts that because the judgment did not define *when* he needed to provide respondent with his 1/7 portion of sales of sand and

[4] These eight requirements are: (1) the court had jurisdiction; (2) the judgment clearly defined the acts to be performed by a party; (3) the party directed to perform had notice of the judgment and a reasonable time to comply; (4) the party adversely affected by the alleged failure to comply has applied to the court for aid in compelling performance, giving specific grounds for complaint; (5) upon notice a hearing be conducted and the party charged with nonperformance is given an opportunity to show compliance or his reasons for failure; (6) after the hearing, the court should determine whether there was a failure to comply with the order; (7) a party should not be compelled to do something which he is wholly unable to do, but the burden of proving inability should be on the nonperforming party; and (8) when confinement is directed, the party confined should be able to effect his release by compliance or agreement to comply as directed to the best of the parties ability. *Hopp*, 279 Minn. at 174-75, 156 N.W.2d at 216-17.

gravel from the land, the judgment is too vague to enforce through a contempt action. But this argument is unpersuasive.

As respondent argued, even when time is not prescribed in legal documents, for instance a contract, a court imputes a reasonable time standard. *Liljengren Furniture & Lumber Co. v. Mead*, 42 Minn. 420, 424, 44 N.W. 306, 308 (1890) (holding if "a contract is silent as to the time of performance," the law implies that performance shall be "within a reasonable time"). Here, there was a stipulated judgment, and a stipulated judgment is generally considered a binding contract. *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 293 (Minn. App. 2007). It is subject to the same rules of interpretation as a contract, and therefore the imputed "reasonable time" requirement applies. *See Beach v. Anderson*, 417 N.W.2d 709, 711 (Minn. App. 1988) (holding that "[t]he settlement of a lawsuit is contractual in nature, requiring offer and acceptance for its formation, and it is subject to all of the other rules of interpretation and enforcement"), *review denied* (Minn. Mar. 23, 1988).

The royalty payments at issue date back to 2015, two years prior to respondent filing the present contempt action. Surely a year, and especially two, provides the reasonable time appellant would need to pay respondent his 1/7 portion of the proceeds. Additionally, appellant does not assert what a reasonable time would be, he only asserts that failing to state a time is too vague to support contempt.[5]

[5] This court also notes that the record in this case demonstrates a possible pattern of deception by appellant in failing to pay respondent. This deception is demonstrated by appellant's direction to Hetteen and Boe to not disclose purchase information to respondent, and that respondent has previously needed to file a contempt motion against

Here, the district court properly held appellant in contempt to aid respondent in recovering payment he is owed. The 2012 order adequately defined the actions appellant needed to perform, and he had reasonable time to do so. The district court did not abuse its discretion by holding appellant in civil contempt and ordering he pay previously unpaid royalties.

IV

Appellant argues attorney fees should not have been awarded in this case because he should have never been held in contempt and simply reiterates his argument that respondent is not a judgment creditor. Because we determine that respondent is a judgment creditor, and appellant was properly held in contempt, we do not address this argument.[6]

However, respondent presents a cross-appeal regarding the attorney fees, arguing the district court should have awarded more than $3,137, claiming this amount does not include reasonably incurred costs, expenses and attorney fees to provide the basis for and the bringing of the contempt motion.

"The trial court's denial of an award of attorney fees will not be disturbed, absent a showing of an abuse of discretion, and only rarely will a trial court's decision regarding attorney fees be overturned on appeal." *Burns v. Burns*, 466 N.W.2d 421, 424 (Minn. App. 1991).

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appellant in order to be properly paid. Appellant cannot hide behind this timeliness argument to continue to avoid paying respondent what is due based on the 2012 judgment.

[6] Appellant concedes that district courts have statutory authority to award attorney fees in contempt proceedings. Minn. Stat. § 588.11 (2016).

Respondent's counsel submitted six invoices listing a variety of services including phone calls with the client, research, deposition expenses, file review, brief writing and hearing preparation. But the district court determined "accounting of his attorney fees dates to January 11, 2017, when this action was renewed, and includes far more than just fees for the motion for contempt and the costs associated with bringing that motion." It then rejected four of the six invoices as outside the scope. But even after considering the two remaining invoices, the court awarded only $3,137, less than the total from those two invoices, which was $4,585.05. The court explained that it additionally subtracted all appeal costs included in those two invoices to come up with the $3,137.

But what the district court failed to do here is make factual findings as to what constituted costs associated with bringing the contempt motion. We are persuaded, for instance, by respondent's argument that the cost of investigating this matter in order to support the motion for contempt, should be included in attorney fees. But the court rejected the invoices that included the costs of the Hetteen and Boe depositions. The district court also failed to make an exact calculation of the costs it included in the attorney fees, and when we review the invoices the court considered and attempt to calculate the total, even subtracting appeal costs, we do not arrive at the exact court-ordered number.

We therefore reverse the court's order on attorney fees and remand for the court to make additional findings as to which costs respondent incurred in bringing the contempt motion, and to make and document an exact calculation based on covered costs as to what attorney fees should be.

V

Last, appellant argues the district court's order requiring him to pay $12,575.33 is not supported by the record, since the number is based solely on respondent's conclusory statement that this is the amount he is owed, it fails to account for surface area payments, and it fails to account for the difference in royalties paid to Spruce versus those paid to appellant, personally. The district court's factual findings are reviewed for clear error and its conclusions of law are reviewed de novo. *Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 797 (Minn. 2013).

The district court here ordered appellant to pay $12,575.33, but again failed to include in its order the findings as to how it arrived at that exact number. This is the number that respondent asserts he should be paid, and respondent bases that assertion on R&Q Trucking's payment of $30,741 in royalties and Minn-Dak and Northwest Concrete payments of $95,821.86. Respondent's 1/7 share of these totals, minus $5,505.08 appellant already paid, is the $12,575.33 the court ordered.

Appellant does not contest the R&Q Trucking amount, and it is supported by Hetteen's deposition where he lists this amount. But appellant does contest the Minn-Dak and Northwest Concrete amount. Documents submitted reflect payments of $70,594.70 from Minn-Dak and $14,250 from Northwest Concrete, but this totals less than the $95,821.86 respondent asserts. Therefore this total is unsupported by the record.

Appellant further argues the district court's calculation of unpaid royalties is incorrect because it fails to subtract "surface area payments" from the royalties. Minn-Dak paid Spruce $0.65 per yard as a surface area lease payment, a cost unrelated to the sand

and gravel royalties. But respondent asserts all costs, including this surface area lease payment are related to the sand and gravel since Spruce was only granted non-exclusive mineral rights for the "sole purpose of mining gravel and sand" and could not lease surface area rights to a third party. The district court made no findings regarding these surface area payments and what they may mean. Therefore, the payments should be considered on remand.

Appellant further asserts the royalty amounts at issue were paid to Spruce, and not to him personally, and it is only 1/7 of royalties paid to him personally that are due to respondent. In his leasing contract with Spruce, appellant is only due $1.30 in royalties per yard of product removed. If respondent's 1/7 share of proceeds applies only to what appellant, personally, receives, this would reduce the amount appellant owes respondent. Appellant asserts that to hold him liable for the royalties paid to Spruce, the court would need to pierce the corporate veil and that respondent has failed to provide a basis to do so. Respondent asserts appellant is using Spruce to "syphon income to his LLC" because he believes that he only needs to pay 1/7 of royalties he personally receives. Alternatively, respondent argues that he is due a 1/7 share of royalties no matter to whom those royalties are paid.

The 2012 judgment states that respondent will have "a perpetual 1/7 interest in and to all royalties of the sand and gravel located upon the real estate being conveyed to [appellant] herein . . . shall receive 1/7 of all gross sales of said sand and gravel located upon said property . . . [Appellant] shall provide [respondent] with 1/7 of all sales/compensation for the use of sand and gravel from said acres." This language

describes a payment for general sales and profits, it does not designate to whom those profits are paid. Therefore, respondent should receive a full 1/7 of the profits, whether paid to Spruce or appellant, personally.

We reverse the amount the district court ordered appellant to pay respondent in unpaid royalties and in attorney fees, and remand it to the district court to make additional factual findings and complete an exact calculation of what money respondent is due.

Affirmed in part, reversed in part, and remanded.